

Applicant: Jim G. Ryan  
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### **REMARKS**

The foregoing amendments and following comments are believe to be fully responsive to the Office Action mailed July 19, 2007. Accordingly, reconsideration of the claim rejections is requested in light of the foregoing amendments and following comments.

A change of address and power of attorney were submitted in this application on November 9, 2007. This change of address and power of attorney appointed the attorneys associated with customer number 28101 to prosecute this application, including the undersigned attorney.

A petition and fee for a two-month extension of time pursuant to 37 C.F.R. §1.136 are also being filed herewith.

Claims 1-32 are currently pending in the present application. Claims 29-31 were previously withdrawn from consideration, and are hereby cancelled herein. In the Office Action of July 19, 2007, claims 1-11, 21-28, and 32 were allowed. Claims 15-19 were objected to for being dependent upon a rejected base claims, but otherwise indicated as being allowable if re-written in independent form to include all of the limitations of their base claims and any intervening claims.

#### **Objected to Claims 15-19**

Dependent claims 15 and 19 have been amended herein to be in independent form, including all of the limitations of their respective base claims and intervening claims. Claim 16-18, which were also objected to, are dependent upon claim 15. Accordingly, claims 15-19 should now be in a condition for allowance.

#### **Rejected Claims 12-14 and 20**

Claims 12-14 and 20 were rejected for allegedly being anticipated by U.S. Patent No. 4,985,925 issued to Langberg. The Langberg patent discloses at col. 3, lines 58-63:

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With Electronic Earplugs, the summing microphone can be used to monitor the sound pressure level (SPL) at the eardrum. If the SPL increases above a specified level, the Electronic Earplug can generate a warning light or sound which prompts the user to re-insert the earplug. [Emphasis added].

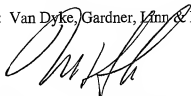
The Langberg patent therefore discloses a system in which the earplug is determined to have been removed from the ear canal if the sound pressure level (SPL) has increased above a specified level. Independent claims 12 and 20 have been amended herein to specify that the determination that the hearing instrument has been removed from the ear canal is based upon the received acoustic energy being less than the radiated energy by a threshold amount. Amended claims 12 and 20 thus are directed to a system that works in essentially the opposite manner to what is disclosed in the Langberg patent. The Langberg patent therefore fails to disclose the subject matter of amended claims 12 and 20. Further, the Langberg patent fails to teach or suggest the subject matter of amended claims 12 and 20 because modifying the Langberg system to operate in an opposite manner would destroy the functionality of the Langberg system. Accordingly, the rejection of claims 12 and 20 in light of the Langberg system should be withdrawn and these claims, along with dependent claims 13 and 14 (dependent upon claim 12), should be in a condition for allowance.

In light of the foregoing, all of the claims of the application should now be in a condition for allowance. A notice to such effect is respectfully requested.

Respectfully submitted,

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By: Van Dyke, Gardner, Linn & Burkhart, LLP



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